counsel and additional time to file a new motion. To accept White's reading of *Bradley*, that the Court there announced a single remedy for abandonment, would mean that the Supreme Court of Missouri had *sub silentio* reversed *Sanders* (while citing *Sanders*) and *Pollard*, a case it had decided only two months before. As interpreted by White, *Bradley* is inconsistent with *Ervin*, which preceded White's first appeal to the Supreme Court of Missouri and which rejected the remedy White sought. The Eighth Circuit's holding that the abandonment remedy afforded White was unpredictable and thus an inadequate bar to habeas review rested on a glaring misreading of Missouri law; this Court should correct it. *Cf. Bradshaw v. Richey*, 126 S.Ct. 602, 603-05 (2005) (reversing Sixth Circuit because of its misinterpretation of Ohio's doctrine of transferred intent).

5. In an attempt to moot the adequacy issue, White denigrates Missouri's fact pleading rule, Resp. Brief 8 n.3, the violation of which resulted in White's procedural default of his claims that counsel was ineffective for not calling to the stand various witnesses. App. 242-43. Missouri has had a fact-pleading rule since 1849. *ITT Commercial Fin. Co. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 377 (Mo. 1993) (en banc). That rule is regularly followed and has especial force in postconviction proceedings. *See Morrow v. State*, 21 S.W.3d 819, 822 (Mo. 2000) (en banc); App. 150-51. It is not a "strict wording requirement." Resp. Brief 8 n.3. The problem with White's motion was not that he used the word "adduce," instead of some other word, to describe the witnesses's testimony. Resp. Brief 8 n.3. The problem was that he never said what these witnesses would have testified to. App. 242 ("White's pleadings stop short of directly alleging what the witnesses would testify to, if called. As such, they are deficient[.]"). Missouri has long required such specification. *See, e.g., State v. Starks*, 856 S.W.2d 334, 336 (Mo. 1993) (en banc). Missouri's fact-pleading is an easy-to-satisfy requirement that, as the Supreme Court of Missouri held, prevents Rule 29.15

movants like White from turning the "pleadings process into clever gamesmanship." App. 243.

6. White claims that by the time his case came before the Supreme Court of Missouri, "abandonment by postconviction counsel was a well-settled excuse for procedural default." Resp. Brief 18 n.6. But *Luleff* held that the appropriate forum for rasing an abandonment claim "is in the [trial] court where the motion is being prosecuted by the movant." 807 S.W.2d at 497. And because neither *Luleff* nor *Sanders* expressly made the abandonment doctrine retroactive, White should have anticipated that it would apply prospectively only, and thus not to his case. Pet. 20. In sum: White had no legitimate expectation that he could avail himself of the abandonment doctrine; the Supreme Court of Missouri conferred a windfall on him; and the Eighth Circuit should have turned a deaf ear to his complaint about the adequacy of that windfall. Pet. 19-21.

CONCLUSION

This Court should grant the petition for a writ of certiorari and reverse the judgment of the Eighth Circuit.

Respectfully submitted,

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